

State of South Carolina
Appeal Case Number
County of Horry

(2012) # CP2609486

Notice of Appeal
Criminal Appeal in the
Magistrate/Municipal Court

Mr. Michael Louis Sgro,
Appellant,

-vs-

State of South Carolina and
Town of Surfside Beach,
Appellate(s).

RECEIVED
MAY 31 2018
S.C. SUPREME COURT

Jessica E. Kinard
Staff Attorney
S.C. Bar No. # [77889].

Judge G. Blanton
[14-DE-J-0054].
[28 CFR] 16.34.

Mr. Michael I. Sgro
505 N. Kings Hwy.
Myrtle Beach, [SC]. 29577; Mr. Michael I. Sgro Executed on (05/29/18).

Statement of Case and the Facts

The State of South Carolina contravened the [legal process] under the (sixth amendment) to the U.S. Constitution's application to the States through the (fourteenth amendment) guarantee to an accused the right to a speedy trial. The court must consider four factors, the 4-part balancing test.

- (1.) Length of delay;
- (2.) Reason for the delay;
- (3.) The Appellant's assertion of the right;
- (4.) Prejudice to the Appellant.

(1.) Length of Delay; Magistrate Judge G. Blanton overruled Rule 65, [SCRCP] and detained the Appellant without bail under S.C. Code Ann. 17-25-10 (1976). No person shall be punished for an offense unless duly and legally convicted thereof in a court having competent jurisdiction of the cause and of the person. SB[PD] instigated cognizable discrimination under ADA Title [II]. If any person shall be or stand committed or detained for any crime, he shall be entitled to the writ of habeas corpus under section 17-17-10. Officer Butler violated suspects (fourth amendment) to the U.S. Constitution protection after suspect was placed in handcuffs. Officer Butler continued a discriminatory false arrest pattern by a police officer acting with malice and reckless indifference cognizable under section 1983. Proper motive doesn't exist for Officer Butler's actions, this arrest while acting under color-of-state-law proves Officer Butler knowingly and deliberately arrested a Appellant without probable cause under section 16-11-620.

(2.) Reason for the Delay; Hon. Larry B. Hyman Jr. contravened under Double Jeopardy clause of the (fifth amendment) to the U.S. Constitution which prohibits anyone from being prosecuted twice for substantially the same crime. Further more, no person shall be punished for an offense unless duly and legally convicted thereof in a court having competent jurisdiction of the cause and of the person under section 17-25-10. The States wording under S.C. Code Ann. 16-11-620 (1976) states; "On conviction, be fined not more than \$ {200.00} dollars or be imprisoned not more than thirty (30) days. The State of South Carolina dismissed the Initial Appeals brief with prejudice for case no. #(2014)-CP-26-6015 and then rejected a ("PCR") application.

(3.) Appellant's assertion of the right; Magistrate Judge G. Blanton barred further action at law after holding a bench trial on the (44th) day of incarceration under section 16-11-620. Whenever a municipal court or a magistrates court shall have acquired jurisdiction by reason of a person committing an act which is alleged to be in violation of a municipal ordinance and which is in violation of the criminal law of this State a conviction or an acquittal by the first court acquiring jurisdiction shall be a complete bar to a trial by another court for the same alleged unlawful act or acts pursuant to S.C. Code Ann. (17-23-20) (1976). Substantive law defines the remedy and the right, while the law of procedure defines the modes and conditions of the application of one to the other. The bench trial contravened Appellant's right to a signed request for trial by jury, the Appellant was convicted on (2) counts of trespass prior to a trial by jury held (in absentia).

(4.) Prejudice to the Appellant. Amendment [VII]. In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of (trial by jury) shall be preserved, and no fact tried by a jury shall be otherwise reexamined in an Court of the United States, than according to the rules of the common law.

Case no. # 35552GG provides clear and convincing evidence that the State's misconduct was willful, wanton, or with reckless disregard. There is a genuine issue of material fact, Appellant is entitled to judgment as matter of law. A person aggrieved by judgment or decree, as requirement for right to appeal, when judgment or decree operates on his rights of property or bears directly upon his interest and constitutes substantial grievance. A State shall not be immune under the (eleventh amendment) to the Constitution of the United States from an action in Federal or State court of competent jurisdiction.

The state action constitutes denial of some personal or property right, or imposition on party of burden or obligation. The lack of available accommodations is classified as discrimination under [42 U.S.C.] 12182(a). Section 17-27-70(c); authorizes the Court to grant a motion by either party for summary disposition of an application when it appears from the pleadings that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

The Court makes the following findings of fact and conclusions of law. The basis for a ruling on Respondent's motion to dismiss under section 17-27-20(A); contravenes Respondent's filing of an application which may commence a post-conviction relief action on the following grounds:

- 1.) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of the State;
- 2.) That the court was without jurisdiction to impose sentence;
- 3.) That the Sentence exceeds the maximum authorized by law;
- 4.) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.
- 5.) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise held in custody or other restraint; or
- 6.) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

The (fifth amendment) to the U.S. Constitution creates a number of rights relevant to both criminal and civil legal proceedings. In criminal cases, the (fifth amendment) guarantees the right to a grand jury, forbids double jeopardy, and protects against self-incrimination. It also requires that "due process of law" be part of any proceeding that denies a citizen "life, liberty or property" and requires the government to compensate citizens when it takes private property for public use.

Amendment [V]. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or navel forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Double Jeopardy clause of the (fifth amendment) to the U.S. Constitution prohibits anyone from being prosecuted twice for substantially the same crime. When a state re-prosecutes for the same offense following conviction and multiple punishments for the same offense with identical statutory elements, or one is a lesser statutory offense, the inquiry must cease, and the subsequent prosecution is barred. I, Michael Louis Sgro, do hereby request a Final Order of Dismissal signed by Judge William H. Seals, Jr. on March 07th, (2016) and hereby [PETITIONED].

Supreme Court of South Carolina
P.O. Box 11330
Columbia,[SC]. 29211

May 29th (2018).

Re: Rule 242, SCACR.

The legal term construe means to determine the meaning of the words of a written (document), statute or legal decision, based upon the rules of legal interpretation as well as normal meanings. This (document) construes the (first amendment) of the U.S. Constitution's right to [petition] the Government for a redress of grievances. The State of South Carolina's refusal to acknowledge or address a federal statute's protection is a violation of the U.S. Constitution.

Under [42 U.S.C.] 12203(b). It shall be unlawful to [coerce], intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted by this chapter: the concept of [other legal process] or ADA designated litigation is [construed] under [42 U.S.C.] 407(a). The amount of time used to [construe] a (false) arrest under the (fourth amendment) to the U.S. Constitution is extensive.

The file for this (2012) (false) arrest contains (19) pages of documentation which have already been submitted to the Office of the Attorney General for the State of South Carolina. Postage was paid under [other legal process]. More computer time is still required to organize this (2012) case for the purpose of the return of the bail money equaling \$ {470.00} dollars. The right to return of this bail money will not be relinquished.

RECEIVED

MAY 30 2018

S.C. SUPREME COURT

May 16th (2018).

Re: Rule 243, (SCACR).

Rule 243, Certiorari to review Post-Conviction Relief Actions.

(a) Review by Writ of Certiorari. A final decision entered under the Post-Conviction relief act shall be reviewed by the Supreme Court upon [petition] of either party for a writ of certiorari, according to the procedure set forth in this Rule.

Pursuant to S.C. Code Ann. 16-5-60(1976). Any citizen who shall be hindered, prevented or obstructed in the exercise of the rights and privileges secured to him by the Constitution and laws of the United States or by the Constitution and laws of this State or shall be injured in his person or property because of his exercise of the same may claim and prosecute the county in which the offense shall be committed for any damages he shall sustain thereby, and the county shall be responsible for the payment of such damages as the court may award, which shall be paid by the county treasurer of such county on a warrant drawn by the governing body thereof.

Pursuant to [42 U.S.C.] 12203(a). No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter. (b) It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on the account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

Under [42 U.S.C.] 12202. A State shall not be immune under the (eleventh amendment) to the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State. In (1994), the [SSDIB] became eligible under Section 504 of the Rehabilitation Act of (1973). No accredited College coursework has been obtained to date.

Under [42 U.S.C.] 1395nn(g)(4). Any physician or other entity that enters into an arrangement or scheme (such as a cross-referral arrangement) which the physician or entity knows or should know has a principal purpose of assuring referrals by the physician to a particular entity which, if the physician directly made referrals to such entity, would be in violation of this section, shall be subject to a civil money penalty of not more than \$ {100,000.00} dollars for each such arrangement or scheme.

In (1997), this [SSDIB] claim was transferred to the State of South Carolina subsequent to the State of Minnesota processing this claim under [42 U.S.C.] 1320a-7b(a). This [SSDIB] claim has produced meager [SGA] until (2003). The SSA has no record of earnings for the past (15) years.

The bail money was secured from [SSDIB] payments which are protected in accordance with [42 U.S.C.] 407(a). The Appellant has the right to a ("PCR") and the return of his bail money in accordance with the federal statutory protections listed above. The State of South Carolina made another error or Constitutional injustice that is now required to be corrected to the full extent of the law.

[1]-Mr. Michael L. Sgro;  Executed on (05/29/18).

The Supreme Court of South Carolina

Michael L. Sgro, Petitioner,

v.

State of South Carolina and Town of Surfside Beach,
Respondents.

Appellate Case No. 2018-000926

~~Lower-Court Case No. 2012CP2609486~~

ORDER

By order dated January 4, 2018, the South Carolina Court of Appeals dismissed the appeal in this matter. It subsequently denied a motion to reinstate by order dated March 22, 2018, and sent the remittitur to the circuit court on May 1, 2018.

Petitioner has now filed a document with this Court referencing Rule 243 of the South Carolina Appellate Court Rules (SCACR).¹ This document, which was received in an envelope post-marked May 17, 2018, has been construed as a petition for a writ of certiorari to review the decision of the Court of Appeals under Rule 242, SCACR.

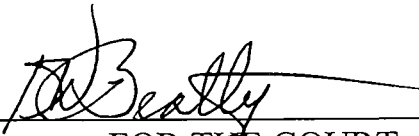
The petition is dismissed for several reasons. First, petitioner has failed to provide a proof of service showing that a copy of the petition has been served on the opposing counsel as required by Rule 242(c), SCACR. Second, petitioner has failed to file and serve an appendix having all of the content specified by Rule 242(e), SCACR.

¹ Rule 243 provides for review of decisions issued under the South Carolina Uniform Post-Conviction Procedure Act. Since this case apparently arises out of a direct appeal from a criminal case before a magistrate, Rule 243 is inapplicable to this case.

Third, since the motion to reinstate was denied on March 22, 2018, any petition for a writ of certiorari had to be served and filed by April 23, 2018. Rule 242(c), SCACR. Therefore, the petition for a writ of certiorari is untimely.

Finally, and most importantly, when petitioner failed to file a timely petition for a writ of certiorari with this Court, the Court of Appeals properly sent the remittitur under Rule 221(b), SCACR. The sending of the remittitur ended appellate jurisdiction of this case. *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007).

Accordingly, the petition for a writ of certiorari is dismissed.



FOR THE COURT

C.J.

Columbia, South Carolina
May 24, 2018

cc: Maronee Elizabeth Pitcher, Esquire
Mr. Michael Louis Sgro
The Honorable Jenny Kitchings

FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2012CP609486

State of South Carolina and
Town of Surfside Beach,

Respondent,

v.

Michael L. Sgro,

Appellant.

RECEIVED
MAY 30 2018
S.C. SUPREME COURT

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina and Town of Surfside Beach by depositing a copy of it in the United States Mail, postage prepaid, on February 6, 2018, addressed to the attorney of record, Maronee Elizabeth Pitcher, Post Office Box 11629, Columbia, South Carolina 29211.

February 06, 2018.

s/ Michael L. Sgro
Mr. Michael Louis Sgro
505 N. Kings Hwy.
Myrtle Beach, [SC]. 29577
ADA designated litigant

The South Carolina Court of Appeals
P.O. Box 11629
Columbia, [SC]. 29211

November 21st (2017).

Re: U.S. (DOJ) Order 556-73.

To: Clerk of Court; Jenny Abbott Kitchings.

This (document) has been promulgated in order to redress the State of South Carolina and their subsequent refusal to uphold the Double Jeopardy clause under the (fifth amendment) to the U.S. Constitution. Appeals Case No. # (2012)-CP2609486 is evidence concerning (fourth amendment) to the U.S. Constitution false arrests by the SB[PD] which occurred despite several warnings for Appellant. In (2012), Officer Butler knowingly and willingly arrested an Appellant twice without probable cause under S.C. Code Ann. 16-11-620(1976).

After the (1st) arrest, a bond of \$ {470.00} dollars was charged to an [SSDIB] payment before releasing Appellant. Under [42 U.S.C.] 407(a), The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, [levy], attachment, garnishment, or other [legal process], or to the operation of any bankruptcy or insolvency law. Bond in the amount of \$ {470.00} dollars was not returned in (2012).

Any citizen who shall be hindered, prevented or obstructed in the exercise of the rights and privileges secured by the Constitution and laws of the United States or by the Constitution and laws of the State shall be injured in his person or property because of his exercise of the same may claim and prosecute the county in which the offense shall be committed for any damages he shall sustain thereby, and the county shall be responsible for the payment of such damages as the court may award, which shall be paid by the county treasure of such county on a warrant drawn by the governing body thereof. Such warrant shall be drawn by the governing body as soon as a certified copy of the judgment roll is delivered to them for file in their office in accordance with S.C. Code Ann. 16-5-60(1976).

A State shall not be immune under the (eleventh amendment) to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than the State under [42 U.S.C.] 12202. A request for jury trial was signed prior to a (2nd) arrest by Officer Butler. Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the (premises of another person) after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the (premises of another person) without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days under section 16-11-620. The case no. #35552GG arrest carried (44) days of incarceration and also the \$ {470.00} dollar paid fine, this fine is in direct conflict with the federal statutes which provide a higher level of protection.

[1]-Mr. Michael L. Sgro; Mr. Michael L. Sgro Executed on (05/29/18).

ASSIGNMENT^[107]

SEC. 207. [42 U.S.C. 407] (a) The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) No other provision of law, enacted before, on, or after the date of the enactment of this section^[108], may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

(c) Nothing in this section shall be construed to prohibit withholding taxes from any benefit under this title, if such withholding is done pursuant to a request made in accordance with section 3402(p)(1) of the Internal Revenue Code of 1986^[109] by the person entitled to such benefit or such person's representative payee.

[107] See Vol. II, P.L. 83-591, §§86, 861, and 871, with respect to income subject to taxes.

[108] This section was enacted August 10, 1939, [P.L. 76-379, §207].

This subsection was enacted April 20, 1983, [P.L. 98-21, §335(a)(2)].

[109] See Vol. II, P.L. 83-591, §3402(p)(1).